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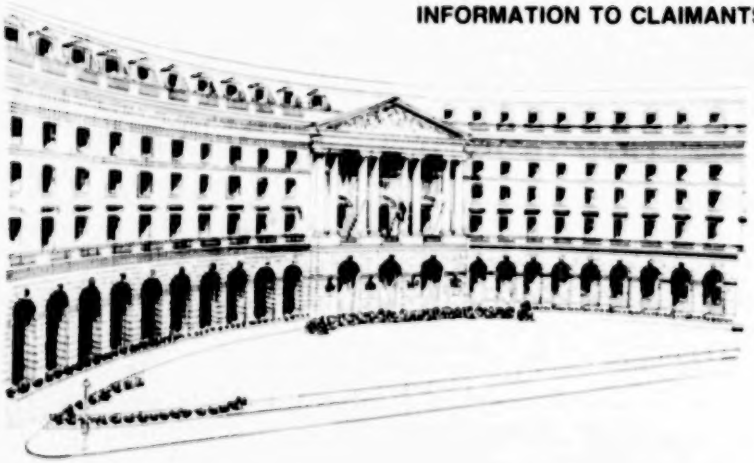
DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco & Firearms

INFORMATION TO CLAIMANTS



ATF P 1850.1 (7/86)

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INFORMATION TO CLAIMANTS

This information has been prepared for the purpose of advising claimants, or their attorneys or agents, of the pertinent statutes and regulations by which property may be forfeited to the United States, and the remedies by which a claimant may assert his interest in the seized property. This information is advisory and should be used as a guide only. In each instance, the pertinent statutes and regulations mentioned should be consulted.

1. **Administrative Petition**: Any person claiming an interest as owner, lienor, or otherwise in any property seized under the laws referred to and which is subject to administrative forfeiture may file a petition for remission or mitigation of the forfeiture. Remission or mitigation of such forfeitures is governed by the applicable customs laws. (See sections 924 (d.) and 3615 of Title 18, and section 784 of Title 49, U.S.C.) The applicable customs laws are sections 813 and 618 of the Tariff Act of 1930 (sections 1613, 1618, Title 19, U.S.C.). See 27 Code of Federal Regulations, Part 72, Subpart D.

   a. The requirements and the form of such a petition are outlined as follows:

      (1) There is no set or standardized form provided or required by the Department for use in filing a petition for remission or mitigation of forfeiture. However, it is preferable that the petition be typewritten on legal size paper; and it is necessary that the petition be executed under oath, prepared in triplicate and addressed to the Director, Bureau of Alcohol, Tobacco and Firearms, and that all copies of original documents submitted as exhibits in support of allegations of the petition be certified as true and accurate copies of originals. Each copy of the petition must contain a complete set of exhibits.

      (2) (a) **Description of property**. The petition should contain such a description of the property and such facts of the seizure as will enable the officers of the Bureau of Alcohol, Tobacco and Firearms concerned to identify the property.

      (b) **Statement regarding knowledge of seizure**. In the event of the petition is filed for the restoration of the proceeds derived from sale of the property pursuant to summary forfeiture, it should also contain, or be supported by, satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, and that he was in such circumstances as prevented him from knowing of the same.

      (c) **Interest of petitioner**. The petition should state in clear and concise terms the nature and amount of the present interest of the petitioner in the property, and the facts relied upon to show that the forfeiture was incurred without willful negligence or without any intention upon the part of the petitioner to defraud the revenue or to violate the law, or such other mitigating circumstances as, in the petitioner, would justify the remission or mitigation of the forfeiture.

      (d) **Petitioner innocent party**. If the petitioner is not the one who in person committed the act which caused the seizure, the petition should state how the property came into the possession of such other person, and that the petitioner had no knowledge or reason to believe, if such be the fact, that the property would be used in violation of law. If known to the petitioner, at the time the petition is filed, that such other person had either a record or reputation, or both, as a violator in the field of commercial crime, the petition should state whether the petitioner had actual knowledge of such record

or reputation, or both, before the petitioner acquired his interest in the property or carrier, or before such other person acquired his right in the property or carrier, whichever occurred later. When personal property is seized for violation of the liquor laws, the determining factor will be whether the person dealt with the petitioner had either a record or a reputation, or both, as a violator of liquor laws.

(e) **Documents supporting claim**. The petition should also be accompanied by copies, certified by the petitioner under oath as correct, of contracts, bills of sale, chattel mortgages, reports of investigators or credit reporting agencies, affidavits, and any other papers or documents that would tend to support the claims made in the petition.

(f) **Costs**. The petition should also contain an undertaking to pay the costs, if costs are assessed as a condition of allowance of the petition. Costs shall include all the expenses incurred in seizing and storing the property; the costs borne or to be borne by the United States; the taxes, if any, payable by the petitioner or imposed in respect of the property to which the petition relates; the penalty, if any, asserted by the Director, Bureau of Alcohol, Tobacco and Firearms; and, if the property has been sold, or is in the course of being sold, the expenses so incurred.

(3) A petition may be filed at any time prior to the sale or other disposition of the property involved pursuant to administrative forfeiture, but a petition in regard to property which has already been sold or otherwise disposed of pursuant to administrative forfeiture must be filed within three months from the date of sale, and must contain satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, and that he was in known of the seizure prior to the declaration or condemnation of forfeiture and that he was in such circumstances as prevented him from knowing of the same. Acquisition for official use is equivalent to sale so far as remission or mitigation of any forfeiture is concerned.

(4) The petition should be filed, in triplicate, with the Chief, Planning and Analysis.

2. **Offers in Compromise**. Any person claiming an interest as owner, lienor, or otherwise, in seized property subject to administrative forfeiture under Title 26, U.S.C., may submit an offer in compromise of the liability to forfeiture of the property. The offer must be made on Form 656-E Offer in Compromise, **in triplicate**, and the form must be accompanied by a remittance in the form of a certified cashier's or treasurer's check or Post Office money order made payable to the Chief, Planning and Analysis, Bureau of Alcohol, Tobacco and Firearms in the amount of the offer. See 26 Code of Federal Regulations, Sections 601.326, and 601.327.

a. The ATF F 3400.5 should set forth, in addition to the terms of the offer and the amount tendered, the name and address of the proponent and a complete description of the property. The provisions "Proponent agrees to pay all storage charges and other costs incidental to the seizure, if the offer is accepted" must also be inserted on ATF F 3400.5. The proponent must attach to **each copy** of ATF F 3400.5 a copy of the certificate of title, conditional sale contract, chattel mortgage, or other document establishing his present interest in the property, certified as a true and correct copy of the original.

b. ATF F 3400.5, with remittance, should be filed **in triplicate** with the Chief, Planning and Analysis.

c. An offer in compromise regarding property subject to administrative forfeiture may be filed any time prior to the declaration of forfeiture of such property.

3. **Claim and Cost Bond**:

a. Any person claiming an interest as owner, lienor, or otherwise, in seized property subject to administrative forfeiture may file a claim and cost bond, and thus effect a transfer of the forfeiture

proceedings to the jurisdiction of the United States District Court for adjudication (Section 7325, Title 26, United States Code; Section 1608, Title 19, United State Code). Both the claim and cost bond should be signed and filed in **quadruplicate**, with the Chief, Planning and Analysis. The claim and cost bond must be filed within **30** days from the date of the first advertisement of the seizure in proceedings under Title 26, United States Code, and within **20** days from such date in proceedings for the forfeiture of vessels, vehicles or aircraft under sections 607–609 of the Tariff Act (sections 1607–1609, Title 19, United States Code). See Code of Federal Regulations, Part 72, Subpart C.

b. The claim should be addressed or captioned to the Chief, Planning and Analysis, Bureau of Alcohol, Tobacco and Firearms, and executed under oath. In the event the claim and cost bond are filed by an attorney on behalf of the claimant, the claim should have a statement attached, signed by such attorney showing whether he prepared it and whether or not he knows of his own knowledge that the statement of facts contained therein is true. The claim should state in clear and concise terms the interest of the claimant in the seized property.

c. Each copy of the claim should be accompanied by a copy of the certificate of title, conditional sale contract, check or mortgage, or other documents tending to such documents should be certified as true and correct copies of the originals. The claimant's mailing address should be given on the claim. The submission of proper claim, not accompanied by a proper cost bond, or vice versa, does not constitute sufficient compliance with the statute.

d. The cost bond required to support claims for seized property must be executed on Form 175, Bond For Costs Under 26 U.S.C. 7325. The bond should be in the penal sum of $250. **The addresses of the principal and surety should be shown**. When a carrier is seized under Chapter 11, Title 49, United States Code, Form 175 may be modified by striking out, **before execution on the bond**, "26 U.S.C. 7325" wherever such reference appears, substituting therefor "Section 1608, Title 19, United States Code."

e. Sections 72.23, 72.24 and 72.25 of the attached regulations (27 C.F.R., Part 72) relate specifically to the filing of claims and cost bonds. **Two** individuals, who have executed Form 33, Affidavit of Individual Surety on Bond, in quadruplicate, may be submitted as sureties **only** if satisfactory proof is submitted that the claimant cannot obtain a corporate surety. Certain types of collateral may be deposited in lieu of corporate surety. When cash, postal money order, or certified cashier's or treasurer's check is furnished in lieu of a corporate surety, the cash or commercial paper should be described on bond Form 175 in the space provided for the name of the surety, and if commercial paper, it should be made payable to the Clerk, United States District Court. The $250 bond insures the payment of costs, but will not effect release of the property.

f. When vehicles, vessels or aircraft are seized under the authority of Chapter 11, Title 49, the cost bond will be $2,500 or 10 (%) per cent of the value of the claimed property, whichever is lower **but not less than $250.00**.

TITLE 27, CODE OF FEDERAL REGULATIONS, PART 72

SECTION 72.23, Type and Conditions of Cost Bond.

The cost bond delivered by a claimant to effect removal of the forfeiture status of the property or carrier claimed to the jurisdiction of the Federal court for adjudication shall be corporate surety bond: **provided, however**, that upon a showing to the satisfaction of the Chief, Planning and Analysis that the claimant may deliver a cost bond with individual sureties acceptable to the Chief, Planning and Analysis **provided, further**, that in lieu of a cost bond with corporate or individual sureties the claimant may deposit collateral as provided in section 72.25. The cost bond shall be conditioned that in the case of condemnation of the property the obligors shall pay all costs and expenses of the proceedings to obtain such condemnation.

SECTION 72.24, Corporate Surety Bonds.

Corporate surety bonds may be given only with surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds, subject to the limitations prescribed by Treasury Department Circular 570, and subject to such amendments as may be issued from time to time.

SECTION 72.25, Deposit of Collateral.

Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by claimants as collateral security in lieu of corporate sureties in accordance with the provisions of Department Circular No. 154, revised (31 C.F.R., Part 225): Provided, that cash, postal money orders, and certified or cashiers' or Treasurers' checks may be furnished by claimants as collateral security in lieu of corporate sureties.